IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 595 OF 2007
IN
SUIT NO. 3290 OF 1986

Kuldip Malhotra ... Appellant

versus

Bali Properties & Investments P. Ltd. and ors. ... Respondents

Mr. S.U. Kamdar, instructed by Mr. P.J. Pandit, for the appellant.
Mr. D.D. Madon, Senior Advocate, instructed by M/s. M. Ranchoddas & Co., for respondents.
Mr. K.L.Vyas, Court Receiver, present.

CORAM: **SWATANTER KUMAR, C.J.** &
DR. D.Y. CHANDRACHUD, J.

DATE: **SEPTEMBER 06, 2007**.

P.C.

The present appeal is directed against the order dated 2nd August, 2007, passed by the learned single Judge on the Court Receiver's Report No. 133 of 2007 in Suit No. 3290 of 1986. The learned counsel appearing for the appellant relies upon different judgements of this Court in the cases of (i) *Matru Ashish Co-op.Hsg. Soc. Ltd.* vs. *Bhavana Maternity Home and others,* 2004 (2) Bom. C.R. 864, and (ii) *Sunanda Janardan Rangnekar* vs. *Rahul Apartments No. II Co-*

op. Hsg. Soc. Ltd. , 2006 (Supp.) Bom.C.R. 254. The contention raised is that the Society is not entitled to recover the non-occupancy charges in excess of 10 per cent of the amounts due on that account.

2. At the very outset, we may notice that the Society was not impleaded as a defendant in the suit nor as a party respondent in the present appeal. The instant appeal has been preferred by an agent of the Court Receiver.

3. Having heard the learned counsel appearing for the parties, we do not propose to interfere with the order impugned before us except to the extent that the Society may not be entitled to recover the amounts on account of non-occupancy charges in excess of 10 per cent in terms of the judgment of this Court. However, we direct the appellant to furnish security to the satisfaction of the Society for making good the amount, if it is finally determined, that the Society is entitled to non-occupancy charges in excess of 10 per cent in appropriate proceedings. We further direct that the appellant shall pay all other charges as contemplated under the impugned order within four weeks from today to the Society. The interest due shall also be accordingly

recalculated. Costs of the Receiver in such proceedings which may be initiated shall be borne by the agent of the Court Receiver.

4. The Appeal is disposed of in the above terms.

CHIEF JUSTICE

DR. D.Y. CHANDRACHUD, J.